

TITLE 8 ENVIRONMENTAL PROTECTION

CHAPTER 1. ENVIRONMENTAL POLICY ORDINANCE

The Tribal Council of the Smith River Rancheria, empowered by the Tribal Constitution to enact ordinances, hereby ordains the following:

§1. Declaration of Purpose

The Smith River Rancheria) finds and declares that

(a) Gaming provides economic development opportunities and a source of revenue for the Smith River Rancheria and its members.

(b) On September 10, 1999, the Smith River Rancheria and various other Indian tribes entered into a Tribal-State Gaming Compact with the State of California in furtherance of Indian gaming.

(c) The Tribal-State Gaming Compact requires the Smith River Rancheria to adopt a tribal environmental policy ordinance to provide for the consideration by the Smith River Rancheria of off-Reservation environmental impacts of certain gaming activities.

Therefore, the Tribal Council adopts this Ordinance to comply with the Tribal-State Gaming Compact and to protect and promote the political integrity, economic security, health, safety and welfare of the Tribe, its members, and all persons living on, or passing through, the Smith River Rancheria.

2. Definitions

For the purposes of this Ordinance, the following words shall have the following meanings:

(a) The term "Tribal Council" means the Tribal Council of the Smith River Rancheria.

(b) The term "Class III gaming" means the forms of Class III gaming defined as such in 25 U.S.C. Section 2703(8) and by regulations of the National Indian Gaming Commission.

(c) The term "environment" means the physical conditions which exist within the area which will be affected by a proposed Project, including land, air, water minerals, flora, fauna, noise, and objects of historic or aesthetic significance.

(d) The term "environmental impact statement" means a detailed written statement on:

- (1) All significant off-Reservation environmental impacts of the proposed Project;
- (2) Options for mitigating or minimizing the significant off-Reservation environmental impacts of the proposed Project, whenever feasible; and
- (3) Any reasonable and feasible alternatives to the proposed Project.

(e) The term "Gaming Activities" means the Class III gaming activities authorized under the Tribal-State Gaming Compact as defined in Section 2.4 therein.

(f) The term "Gaming Facility" means any building in which Class III gaming activities or gaming operations are offered by the Tribal Gaming Operation within the boundaries of the Smith River Rancheria.

(g) The term "negative declaration" means a written statement briefly describing the reasons that a proposed Project will not have a significant effect on the off-Reservation environment and does not require the preparation of an environmental impact statement.

(h) The term "off-Reservation" means a three mile radius around the Smith River Rancheria or such other area as the Tribal Council deems appropriate in its sole discretion considering the proposed Project and the topography, demographics, quality of the environment, and other environmental conditions outside the boundaries of the Smith River Rancheria.

(i) The term "person" means any individual, corporation, firm, partnership, joint venture, association, social club, estate, trust, federal, tribal, state, county, city, or district government, or other political subdivision thereof, or any other group or combination acting as a unit whether incorporated or not, including a person acting in fiduciary or representative capacity.

(j) The term "project" means the commencement, on or after the effective date of the Tribal-State Gaming Compact, of any expansion or any significant renovation or modification of an existing Gaming Facility, as defined below, or any significant excavation, construction, or development associated with the existing Gaming Facility or proposed Gaming Facility.

- (1) For the purposes of this Ordinance, the term "expansion or any significant renovation or modification of an existing Gaming Facility" means a twenty-five percent (25%) increase in the gaming floor of

an existing Gaming Facility and does not include parking lots or related facilities.

(k) The term "Smith River Rancheria" means all land, air, and water located within the exterior boundaries of the Smith River Rancheria.

(l) The term "significant off-Reservation environmental impact" means a substantial, or potentially substantial, adverse change in the off-Reservation environment, as defined in this Ordinance.

(m) The term "Tribal-State Gaining Compact" means the Compact entered into between the State of California and the Smith River Rancheria and various other federally recognized on September 10, 1999 pursuant to the Indian Gaming Regulatory Act of 1988 (18 U.S.C. Sec. 1166, et seq. And 25 U.S.C. Sec. 2701, et seq.)

(n) The term "Tribe" means the Smith River Rancheria, a federally recognized Indian tribe.

§3. Applicability of Ordinance

This Ordinance applies solely to the Gaming Facility operated by the Tribe.

§4. Environmental Impact Statement or Negative Declaration Determined by Tribal Council

(a) The Tribal Council shall be responsible for determining whether an environmental impact statement or a negative declaration shall be required for any proposed Project which is the subject of this Ordinance.

(b) The determination of the Tribal Council shall be final and conclusive.

5. Negative Declaration

(a) If the Tribal Council determines that a proposed Project will not have a significant impact on the off-Reservation environment, a negative declaration shall be prepared for the proposed Project.

(b) The Tribal Council shall provide for public notice of the negative declaration by preparing a public notice briefly describing the proposed project, indicating that the negative declaration has been prepared, and the address where copies of the negative declaration are available for review. Public notice shall be accomplished in any one of the following ways:

- (1) Publication of the public notice for three (3) consecutive days in a newspaper of general circulation in the area potentially impacted by the proposed Project; or
- (2) Posting of the public notice in the area where the proposed Project is to be located.

(c) In preparing the negative declaration, the Tribal Council may consult any person it deems appropriate and may hire any person with the necessary expertise to prepare the negative declaration.

6. Environmental Impact Statement

(a) If the Tribal Council determines that a proposed Project may have a significant effect on the off-Reservation environment, the Tribal Council shall collect, or cause to be collected, sufficient information to either:

- (1) Determine that the proposed Project will have a significant effect on the off-Reservation environment, in which case the Tribal Council shall prepare, or cause to be prepared, an environmental impact statement; or
- (2) Determine that the proposed Project will not have a significant effect on the off-Reservation environment, in which case the Tribal Council shall prepare, or cause to be prepared, a negative declaration and follow the provisions of section 5, above.

(b) If the Tribal Council determines that an environmental impact statement is required, the Tribal Council shall prepare, or cause to be prepared, a draft environmental impact statement for public notice and comment in accordance with the procedures set forth in section 7, below.

(c) Thereafter, the Tribal Council shall prepare, or cause to be prepared, a final environmental impact statement, taking into account any comments received from the public.

7. Circulation of Public Notice on Environmental Impact Statement

(a) After the preparation of the draft environmental impact statement, the Tribal Council shall provide for public notice of the proposed Project in any one of the following ways:

- (1) Publication of the public notice for three (3) consecutive days in a newspaper of general circulation in the area potentially impacted by the proposed Project; or

- (2) Posting of the public notice in the area where the proposed Project is to be located.

(b) The public notice shall specify: the period during which comments will be received on the draft environmental impact statement; where to send any comments on the draft environmental impact statement; the date, time, and place of any public meetings on the proposed Project; a brief description of the proposed Project; and the address where copies of the draft environmental impact statement are available for review.

8. Copies of the Environmental Impact Statement to Certain Public Agencies

(a) In addition to the publication of the public notice required in section 7, above, the Tribal Council shall submit the draft environmental impact statement, along with the public notice, to the State Clearinghouse in the Office of Planning and Research and the Del Norte County Board of Supervisors for distribution to the public.

(b) At the time of its completion, the Tribal Council shall send a copy of the final environmental impact statement to the State Clearinghouse in the Office of Planning and Research and the Del Norte County Board of Supervisors for distribution to the public.

9. Consultation with Relevant Parties

(a) The Tribal Council shall consult with the Del Norte County Board of Supervisors, and if requested by the Del Norte County Board of Supervisors, meet with them to discuss mitigation of significant adverse off-reservation environmental impacts.

(b) The Tribal Council shall be available to meet with and provide an opportunity for comment by those members of the public residing off-Reservation within the vicinity of the Gaming Facility such as might be adversely affected by the proposed Project.

10. Consideration of the Environmental Impact Statement

(a) The Tribal Council shall consider the final environmental impact statement at the time of its decision on the proposed Project, including considering, where possible, alternatives to the proposed Project and options for mitigating or minimizing the significant off-Reservation environmental impacts of the proposed Project.

(b) If, in the Tribal Council's sole discretion, economic, social, cultural, environmental, or other factors make alternatives to the proposed Project or options for mitigating or minimizing the significant off-Reservation environmental

impacts of the proposed Project infeasible, the Tribal Council may nonetheless carry out or approve of the proposed Project as originally designed and proposed.

11. Further Considerations During the Conduct of a Project

(a) During the conduct of a Project, the Tribal Council shall keep apprized of the Project's progress the Del Norte County Board of Supervisors, and potentially affected members of the public, which, unless otherwise requested and agreed to by the Tribal Council, shall mean members of the public residing off-Reservation within the vicinity of the Gaming Facility such as might be adversely affected by the proposed project.

(b) During the conduct of a Project, the Tribal Council shall make good faith efforts to mitigate any and all significant off-Reservation environmental impacts.

12. Delegation of Duties and Use of Contractors

(a) In complying with this Ordinance, the Tribal Council may delegate the carrying out of the requirements under this Ordinance to any authorized tribal governmental body or tribal staff.

(b) In complying with this Ordinance, the Tribal Council may hire any environmental consultant or other appropriate person to assist in carrying out the requirements of this Ordinance.

13. Effect of Ordinance on Other Tribal Ordinances

This Ordinance supercedes any conflicting or contrary superceding ordinances passed by the Tribe.

14. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, its invalidity does not affect other provisions or applications of this Ordinance, and to this end the provisions of this Ordinance are severable.

15 Sovereign Immunity

The sovereign immunity of the Tribe is in no manner waived by this Ordinance or by any action by the Tribal Council or any staff of the Tribe acting pursuant to this Ordinance, notwithstanding any provision of the Tribal-State Gaming Compact.

16. Amendments

This Ordinance may be amended at any time by the Tribal Council.

17. Effective Date and Legislative History

This Ordinance shall take effect immediately upon passage. This Chapter was originally adopted as Ordinance 00-03 on August 22, 2000.